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Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before
The Education Committee

Presented by: James D. McGaughey
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Thank you for this opportunity to comment on **Raised Bill No. 1142, AN ACT CONCERNING RELIEF OF STATE MANDATES ON SCHOOL DISTRICTS.**

Our Office opposes the language in Section 4 that creates a statutory "burden of proof" for parties requesting due process hearings. That language would overturn long-standing Connecticut regulations, and effectively foreclose the possibility of a fair appeal process for special education students and their families.

In almost all cases, "due process" is initiated by parents and guardians who are contesting significant issues regarding the way school systems have evaluated or are addressing their child's needs. In our Office's experience, parents do not happily initiate those requests - requests that usually come only after a lengthy series of disappointing, frustrating interactions with school administrators. When they feel they must request a due process hearing, these parents experience all the angst inherent in "fighting city hall". They face considerable expense, stress and uncertainty, and know they risk alienating administrators who will continue to hold power over their child's future educational experiences.

"Due Process" was originally envisioned as a speedy, impartial, low cost way to resolve disputes and level the playing field between individual families and powerful school systems. In recent years, however, changes in both the federal and state special education law have made the path to due process more difficult for parents to navigate. It is unfair to now require them to bear the additional burden of proving that the district's evaluations, plans, staff assignments, educational practices or other aspects of their child's program are inadequate. Parents do not typically have access to the information and expertise necessary to meet this evidentiary burden without conducting extensive discovery, hiring their own expert evaluators and paying substantial attorney fees. Placing this burden on them can only increase costs, delay decisions and, ultimately, deny many of them their day in court. Districts have far better access to information about their own practices and programs than do parents.

I realize that a 2005 U.S. Supreme Court decision (Schaffer v. Weast) seems to allow the "burden of proof" to be placed on the party that initiates due process under the federal IDEA. However, the Schaffer decision does not require that states adopt this approach. Schaffer involved a due process decision from Maryland – a state where there was no statutory or regulatory direction to administrative hearing officers regarding which party bears the burden of

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proof in a due process hearing. In contrast, Connecticut special education regulations contain explicit direction:

> The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 CFR Section 300.521. (Conn. Regulations. Sec. 10-76h-11)

The Schaffer Court explicitly declined to extend the effect of its decision to states that have adopted their own rules regarding burden of proof. (The Court also made it clear that its decision was limited to the "burden of persuasion", not the "burden of production of evidence".)

In short, the law in Connecticut is well settled and fairly allocates the evidentiary burdens in due process. We are not required to overturn our current rules in response to the Schaffer v. Weast decision. In the name of fairness, I urge you to reject Section 4 of this bill.

I also urge you to reject the seemingly minor language change in Section 5 of the bill. Terminating special education eligibility "upon the child's twenty-first birthday" will effectively overturn current regulations that require school systems to continue educational programming for special education students through the end of the school year in which they turn twenty-one. (See Conn. Regulations Sec. 10-76d-1 (a) (7).)

For those students and their families this would be a devastating change. Many of those students are enrolled in internship or vocational training programs or are receiving other school-to-work transition supports. Completing the school year assures continuity for the student and his or her family, and allows for an orderly transition to adult support services. Funding for day services through other state agencies that can pick up costs of supporting a person at work (e.g. DDS) is usually allocated according to fiscal years, and planning has historically anticipated transitions as occurring at the end of the school year - not on the day of an individual's birthday. For many of the students who would be affected, any extended gap in programming will result in lost skills and regression. It could also leave their families in quite a bind: depending on the individual's needs, working parents might have to stay home from work to provide supervision, or accept the risks of leaving a cognitively disabled young adult unsupervised.

Again, I urge you to reject the changes to current law represented in Sections 4 and 5 of this bill. Thank you for your attention. If there are any questions, I will try to answer them.